

DAVID LAWRENCE

## An Independent FBI Proposed

The controversy between the Federal Bureau of Investigation and a former attorney general as to when wiretapping and eavesdropping are justified or illegal could have a salutary result. For sooner or later the American people will have to face up to the fact that the Department of Justice is a political body, subject to the whims of a President or an attorney general, and this raises the question of whether law enforcement shouldn't be completely separated in the future from the executive branch of the government.

To put in the hands of a cabinet officer the power to decide how laws shall be enforced means that political pressures can interfere with prosecutions or can lead to the use of the investigative mechanism as a weapon of political reprisal.

The attorney general of the United States today is not responsible directly to the people. Yet in most cities and counties the prosecuting attorney must go before the electorate periodically so that judgment can regularly be passed on his particular performance in office.

The Department of Justice, as a law-enforcement agency, logically has a close relationship to the judicial branch of government, and is being constantly supervised by orders or opinions rendered by the courts. It is apparent from the current dispute over

"bugging" that there is no clear definition of where public rights begin or end and when privacy must be respected.

Congress has the power under the Constitution to write laws that not only prescribe the jurisdiction of the federal courts but also authorize steps to be taken from time to time to enforce the laws of the land.

Law enforcement, moreover, is a task so closely related to interpretations of law that it would be more natural to have the head of the FBI serve a 15-year term and report directly to Congress—as is the case with the comptroller general—than to make him responsive, as to present, to the edicts of the man in the White House or his attorney general.

Within the past 80 years, Congress has established what are known as "independent agencies"—the first being the Interstate Commerce Commission in 1887. Many similar bodies have been created since. Their rulings are subject to court review (and they have become quasi-judicial commissions of the government. Their members are appointed by the President and confirmed by the Senate. They are not supposed to be under the duress or pressure of the President, and have the right to act independently of the executive branch of the government. An analogous setup for the Federal Bureau of

Investigation would at least permit its detachment from politics and would assure impartiality in handling the rules of law enforcement and investigative procedures.

It is true that through all the years during which the Federal Bureau of Investigation has operated there have been relatively few instances of political interference by any administration. But the President or his representative in the Department of Justice does have the power to tell the FBI what to do. This has just been emphasized by the disclosure of various memoranda passing between the FBI and Robert F. Kennedy when he was holding the office of attorney general and his brother was President of the United States.

It has taken a good deal of courage for J. Edgar Hoover, who has been director of the FBI since 1924, to stand up to all the attorneys general who have from time to time sought to give him instructions as to what his agency could or could not do in law enforcement. Fortunately, most of these differences have been resolved without publicity and in a constructive way. But the weakness in the system still prevails, and will not be cured until the FBI is set up as an independent agency similar to the various federal commissions already established by Congress.

© 1966